

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DAVID TOUCHTON and DEBRA  
TOUCHTON,

Plaintiffs,

Case No: 10-12965

v

Hon. Mark A. Randon

FIDELITY NATIONAL PROPERTY AND  
CASUALTY INSURANCE COMPANY,

Defendant.

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**ORDER PERMITTING SUPPLEMENTAL BRIEFING FROM  
PLAINTIFF AND CONVERTING FIDELITY'S MOTION *IN*  
LIMINE (DKT. 41) INTO A MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court on Defendant Fidelity National Property and Insurance Company's ("Fidelity") motion *in limine* (Dkt. 41). By way of procedural background, Fidelity first raised the legal arguments presented in its motion *in limine* in a motion for summary judgment (Dkt. 29). The Court, however, struck Fidelity's motion from the docket since it was filed past the dispositive motion cut-off. The Court's order (Dkt. 36) striking Fidelity's motion for summary judgment and denying Fidelity's motion for leave to file a tardy dispositive motion (Dkt. 30) is hereby **VACATED**, and Fidelity's motion for leave to file a dispositive motion is instead **GRANTED**.<sup>1</sup>

More particularly, the Court is putting Plaintiffs on notice that it intends to treat Fidelity's motion *in limine* (Dkt. 41) as a motion for summary judgment under Fed. R. Civ. P. 56. If

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<sup>1</sup> Rule 56(b) states that "[u]nless a different time is set by local rule *or the court orders otherwise*, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery" (emphasis added). Through this order, the Court is ordering "otherwise," and construing Fidelity's motion *in limine* as a motion for summary judgment.

Plaintiffs wish to file any additional briefing with the Court, or present the Court with any additional exhibits, Plaintiffs must do so **WITHIN TWENTY ONE (21) DAYS** of the date of this order. If Plaintiffs do not intend to file any additional briefing or exhibits in response to Fidelity's motion *in limine* (which, again, is now a motion for summary judgment), Plaintiffs should inform the Court of their decision to stand on their existing response (Dkt. 42) as soon as that decision is made.

**SO ORDERED.**

s/Mark A. Randon  
MARK A. RANDON  
UNITED STATES MAGISTRATE JUDGE

Dated: October 26, 2012

*Certificate of Service*

*I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, October 26, 2012, by electronic and/or ordinary mail.*

s/Melody Miles  
*Case Manager Magistrate Judge Mark A. Randon  
(313) 234-5542*